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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>28 February 2011</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>51-55,58 and 60-66</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>51-55,58 and 60-66</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>01/27/2001</u> is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the correspondence filed 02/28/2011.
Claims 51-55, 58, and 60-66 were and remain pending. Claim 51 (system), 61 (method), 64
(software on computer readable medium) are independent.

Drawings

2.   The drawings are objected to under 37 CFR 1.83(a). The drawings must show
every feature of the invention specified in the claims. Therefore, the plurality of "affiliate
servers", "websites", "http command", "affiliate fields", "primary referral link", "secondary
referral link" , "programming", first, second, third, fourth sublinks and all the claimed system
interconnections,   must be shown or the feature(s) canceled from the claim(s). No new matter
should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to
the Office action to avoid abandonment of the application. Any amended replacement drawing
sheet should include all of the figures appearing on the immediate prior version of the sheet,
even if only one figure is being amended. The figure or figure number of an amended drawing
should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure
must be removed from the replacement sheet, and where necessary, the remaining figures must
be renumbered and appropriate changes made to the brief description of the several views of the
drawings for consistency. Additional replacement sheets may be necessary to show the
renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an
application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"
pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will
be notified and informed of any required corrective action in the next Office action. The
objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

3.   **The previous rejection of claims *64-66 under 35 USC § 101* is withdrawn with the amendment of the claims to include "non-transitory" before "computer readable medium" that overcame this rejection.**

Claim Rejections - 35 USC § 112 (second paragraph)

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   **The previous rejection of claims 51-55, 58, 60 under 35 U.S.C. 112, second paragraph, is withdrawn because:**

a) Applicant clarifies the system claim is directed to the clearinghouse (herein "CH") server only;

b) the parsing part with all the subvariables has been deleted from the claim 51;

c) Claims 58, 60 are corrected to depend on 51.

Claim Rejections - 35 USC § 103

6.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7.   **Claims 51-55, 58, 60-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), and further in view of Official Notice #2.**

Independent claims 51, 61, and 64 and claims 58 and 60:

Crouthamel discloses method and system for exchanging data between <u>affiliated</u> sites via a central hub. Fig 4 shows processing, tracking of referrals via central hub 18 (Herein "CH") between many affiliates and merchants. Col. 7 lines 18-35 shows commission based referral system. Fig. 6 shows user redirection from affiliate site to Merchant site via the central hub (affiliate directing to CH and CH redirecting to merchant). See e.g. Figure 6, steps 86, 88,98 and associated text. (col. 17 line 57 to col. 18 line 10: consumer clicks on a link on partner site that links to the CH which redirects to a merchant website; the link contains a link ID which corresponds to an url of another partner which can be a merchant webpage). The CH captures transaction data at the merchant website (Fig 6 step 98 and associated text). Crouthamel teaches, for compensation of referrers, tracking of consumer actions (click-throughs and purchases) via the CH (col. 15 l. 4-32; Figure 4 and associated text); identifying the referrals resulting in purchases by cookies or by other identifiers or methods (col.19 lines 25-30; col.19 lines 12-42);storing transaction data and paying the referrer (col.19 lines 12-16); Crouthamel further teaches tracking of affiliations between affiliates and merchants sites can be done with other types of identifiers (col. 12 lines 25-40). CROUTHAMEL teaches Web servers typically employ the HyperText Transfer Protocol ("HTTP") to enable users to communicate over a number of hyperlinks that interconnect numerous web sites to each other (col. 1 lines 32-35) and its CH server is operable to use HTTP (e.g. col 12 l. 52). **In Crouthamel, each merchant is linked to many partners which all go through the CH. So if Partner 1 refers to merchant M1, it has to go through the CH. So on for merchant 1 (or partner 2) to merchant 2.**

Some relevant excerpts of Crouthamel:

(col. 4 line 64 to col. 5 line 12)

Referring to the drawings, FIG. 1 is a block diagram illustrating a system
10 arranged to employ exemplary embodiments of the present invention. As shown
in FIG. 1, the system includes three partner sites 12, 14 and 16 (also referred
*to as "**affiliate** sites"), three merchant sites 24, 26 and 28, and a*
<u>clearinghouse</u> site 18, all of which are interconnected across one or more
computer networks 11, such as Wide Area Networks ("WANs"), the World Wide Web

*("WWW"), and/or the Internet. However, the computer networks could also take
other forms, such as any communication network.* **Additionally, for simplicity,
only three partner sites, three merchant sites and one <u>clearinghouse</u> site are
illustrated in FIG. 1.** *However, people skilled in the art will appreciate that
more or fewer partner sites and merchant sites could also be used, and,
further, that more than one <u>clearinghouse</u> site could also be used.
Additionally, other arrangements and other elements, whether or not separately
known in the prior art, are contemplated and could also be used.*

(col.15 lines 14-32)
  As the consumer is linked to the **<u>clearinghouse</u>** site 18, the **<u>clearinghouse</u>**
site 18 **appends the consumer's query** and possibly inserts a cookie on a
consumer's system. The cookie allows the **<u>clearinghouse</u>** site 18 to track the
consumer's actions, such as placing a purchase on a merchant site, and to also
track the affiliation between each partner site and the merchant site. When
the consumer orders data on the merchant sites 22 and/or 24, the order data is
sent from the merchant sites 22 and 24 to the **<u>clearinghouse</u>** site 18, as shown
at 64A and 64B in FIG. 4. **Then, the <u>clearinghouse</u> site 18 may store the order
data on the storage unit 22. The <u>clearinghouse</u> site 18 may also track
transactions between the partner sites and the merchant sites, or track how
many consumers have clicked-through to the merchant sites from each partner
site. <u>Additionally, the clearinghouse site 18 may determine commission
payments for each partner site based on the number of click-throughs to
affiliated merchant sites and/or the click-throughs that resulted in product
purchases on the merchant sites.</u>**

(col. 20 line 65 to col. 21 line 6)
 **When the <u>clearinghouse</u> site 18 receives the sets of transaction data from
the partner sites, as shown at 104A and 104B, the <u>clearinghouse</u> site 18
processes the received sets of transaction data and updates the internal tables
on the storage device 22. The internal tables, as previously mentioned, may
include product information data, transaction data, <u>referral</u> data and/or
tracking data. Using these tables, the <u>clearinghouse</u> site 18 may allocate a
credit/commission to each partner site based on the actual amount of
transaction.**

Thus CROUTHAMEL as discussed above disclose a system and a method for:
 supporting web-based commerce and commission tracking at a clearinghouse server,
comprising:
in response to a user computer connecting to said clearinghouse server as a result of accessing a
first referral link in a web page of a first server, wherein said first referral link corresponds to a
referral from said first server to a second server (See e.g. Figure 6, steps 86, 88,98 and associated
text. (col. 17 line 57 to col. 18 line 10: consumer clicks on a link on partner site that links to the

CH which redirects to a merchant website; the link contains a link ID which corresponds to an

url of another partner which can be a merchant webpage),

redirecting said user computer (via the CH) to said second server (citations above, second server

here is e.g. the merchant server in Crouthamel), and

storing a record of said referral from said first server to said second server (citations above; e.g.

col. 20 line 65 to col. 21 line 6);

in response to said user computer connecting to said clearinghouse server as a result of accessing

a second referral link in a web page of said second server, wherein said second referral link

corresponds to a referral from said second server to a merchant server:

redirecting said user computer to said merchant server, and

storing a record of said referral from said second server to said merchant server (citations above

as applied to another different set of referrer and merchant);

Although CROUTHAMEL referrals from one referrer website to a merchant

website (citations above) and teaches commissions for referrals for a purchase transaction

(citations above), <u>Crouthamel does not explicitly disclose</u> successive referrals and does not

teach paying 2 parties or splitting fees for a single transaction. Thus CROUTHAMEL does

not disclose:

"and

in response to an indication that said user computer completed an electronic purchase via a web

page of said merchant server, assigning compensation to said first server and to said second

server based on said record of said referral from said first server to said second server and said

record of said referral from said second server to said merchant server."

However CROUTHAMEL expansively discloses that each merchant has many

partners (col. 4 line 64 to col. 5 line 12).

Thus it would have been obvious at invention time that these partners could be

referral sources for each other and also form successive referrals.

Further, **successive referrals are taught by LANDAU which** discloses a network of affiliates providing a first link on an affiliate site (e.g. fred.com) to reach a first e-site (a CD Merchant.com site), then the first e-site providing a second link to reach a second e-site (e.g. MusicMemorabilia.com) (see at least Fig. 7 and associated text; col. 15 lines 66 to col. 20 line 2: for example, referring to the discussion in cols. 17-18).

Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to add Landau's teaching of successive referrals to CROUTHAMEL to allow forming successive referrals in CROUTHAMEL's system.

Further, Official Notice #1 is taken that it is old and well-known at the time of the invention that central accounting via a central hub is well-known for accounting convenience for the affiliates (see e.g. Pettersen US 6826594 , col. 2 lines 7-41). Also Crouthamel, e.g. col.19 lines 25-30; col. 15 lines 14-22).   Thus it would have been obvious to a PHOSITA to adopt the referral model via central hub (taught e.g. by Crouthamel) in successive referrals for the above well -known accounting convenience (taught by e.g. Crouthamel or Pettersen).

As to the compensation scheme, Official Notice #2 is taken that it is well-known before invention time to split commissions between several parties participating in facilitating completion of a single service or transaction. For example in real estate purchases the commissions (usually a percentage of the sale price) are customarily split between the buyer's and seller's agents and/or brokers who facilitate the transaction. **Because** it is obvious to follow customary practices, thus it would have been obvious to follow this customary and well-known practice of splitting a referral or commission fee between the successive referrers who facilitate the purchase transaction in the system of Crouthamel in view of and Landau and Official Notice #1.

(Note that here, all the HTTP details in claim 51 are not given patentable weight to, because:

"a) The 1ˢᵗ affiliate server is claimed merely as part of the intended use of the CH programmed FOR communicating with the 1st Affiliate server. Thus as a matter of claim

interpretation, the wherein limitation as to the 1ˢᵗ affiliate server is not given patentable weight since the 1st server is outside the scope of the claim. Thus the details of the primary link and the http command are not given patentable weight. **Thus all this means is that the CH is interpreted as merely configured to send and receive communications.**

b) similarly, with the 2nd affiliate server and the merchant server as with the 1ˢᵗ affiliate server.

c) Thus based on the above claim interpretation, the only part that has real meaning for the CH is the last part about assigning compensation by the CH based on items i-iii. Thus for prior art application **the prior art only needs to meet this last part of the claim.** *"*

Thus for claim 51, the prior art only needs to disclose a CH merely **configured to send and receive communications (see Crouthamel) and to assign** compensation based on items i-iii. (It seems Claim 51 as claimed may not even require disclosure of affiliate servers and merchant servers, though the prior art as discussed herein does disclose them.)

Also see the section titled "Response to Arguments" below which is herein made an integral part of this rejection.

Claims 52-53, 62-63, 65-66:

CROUTHAMEL, Landau and the Official Notices disclose a system as in claims 51, 61 and 64 above, and compensation of affiliates but does not disclose wherein compensation is assigned to the first affiliate website and the second affiliate website in equal shares.
or
wherein compensation assigned to the first affiliate website comprises a majority portion of a commission associated with said user's completion of the electronic transaction, and compensation assigned to the second affiliate website comprises a minority portion of a commission associated with said user's completion of the electronic transaction.

Official Notice is taken that it is well-known before invention time that compensation schemes are to be agreed between the parties as desired. They may be dictated by market forces.

They may be dictated by pure greed, self-dealing and can be completely arbitrary and capricious, without (at least apparent) basis on performance. See e.g. "Fixing Executive Compensation Excesses: The board members who decide a CEO's pay have a fundamental conflict of interest, and shareholders need to have more of a say", by Edward E. Lawler III , BusinessWeek, Viewpoint February 5,2009,

http://www.businessweek.com/print/managing/content/feb2009/ca2009025_072667.htm, downloaded 02/16/2009.

Note: "For the last 10 years more than 25% of board members have said it is generally too high, and 50% agree that it is too rich in some high-profile cases."

Thus the practice predates the instant invention. On the other hand, they may based on altruistic motives. See e.g. Excerpt of Hoyt, U.S. Provisional Application No. 60/178,260, filed January 25, 2000, on Public Pair (6 pages attached), page 1 of 6, 2nd to last para., disclosing referrals without commissions.

Because it is obvious to follow customary practices, thus in the system of CROUTHAMEL and Landau, setting compensation of the parties, as desired and agreed by the parties, with or without basis in performance or reason, (as shown in e.g. Lawler III and Hoyt), in any proportions, including in the proportions as claimed, would have been obvious to a PHOSITA. (It is noted the instant specification does not give any reason for the particular compensation split, see e.g. [0013] of the PgPub version, thus the particular compensation split could just have been arbitrary and is not critical to the invention).

Claims 54-55:

CROUTHAMEL and Landau disclose a system as in claim 51 above and CROUTHAMEL further discloses a **database communicatively coupled to the clearinghouse server, the database operable to store data (see discussion of claim 51 above).**

The "data associated with the first affiliate website and the second affiliate website" and "data associated with compensation assigned to the first affiliate website and the second affiliate website" are non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Since a database can store any type of data, it would have been obvious "data associated with the first affiliate website and the second affiliate website" and " data associated with compensation assigned to the first affiliate website and the second affiliate website could be stored if desired. Further CROUTHAMEL at least implicitly discloses the above data.

8.   Alternate Rejection of claims 51-56, 58 giving full weight to all the details of the HTTP:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), and further in view of Official Notice #2.

Claims 51 and 58:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), Official Notice #2 as discussed above in paragraph 7 (including the section titled "Response to Arguments" below, which is made an integral part of the rejection).

As to the details of the HTTP as claimed in 51:

As stated above, Crouthamel teaches first affiliate server (e.g. Fig 4 item 12), 2nd affiliate servers (Fig 4, any of the affiliate 12 or 14 or the merchant sites 22, 24 can be considered an affiliate server), and the merchant server (e.g. Fig 4, merchant sites 22, 24) and their websites with links (citations above). Crouthamel also teaches the clearinghouse server 18 communicating with all these servers.

CROUTHAMEL also teaches Web servers typically employ the HyperText Transfer Protocol ("HTTP") to enable users to communicate over a number of hyperlinks that interconnect numerous web sites to each other (col. 1 lines 32-35) and its CH server is operable to use HTTP (e.g. col 12 l. 52). CROUTHAMEL further teaches identifying the referral source and the destination (e.g. merchant URL). (See e.g. Figure 6, steps 86, 88,98 and associated text. (col. 17 line 57 to col. 18 line 10: consumer clicks on a link on partner site that links to the CH which redirects to a merchant website; the link contains a link ID which corresponds to an url of another partner which can be a merchant webpage).

Thus it is interpreted Crouthamel uses HTTP commands and the "affiliate field" (in the HTTP commands) would be inherent in the referral messages received by the clearinghouse server from the two referrers.

Claim 51 merely states that the incoming messages are parsed to determine the different fields, such as the identity of the referrer and the action taken by the user at that website, e.g. clicking on the link. Obviously, since the message to the clearinghouse is only generated when a user clicks-through the link, the action would be "click-through". The same steps are taken when the user interacts with the secondary referrer's website.

Crouthamel discusses tracking the users who click on the links, thus discloses "parsing" the incoming messages to determine the information in the referrer fields and the type of action taken by the user, e.g. click-through. CROUTHAMEL discloses HTTP thus it is interpreted that CROUTHAMEL discloses

wherein said clearinghouse server is operable to receive communications from said first affiliate server in the form of a HTTP command comprising an affiliate field (to id the 1st affiliate) indicating a user's use of said primary referral link;

Similarly in the case of redirection request to the CH from a second affiliate to a merchant site, CROUTHAMEL in view of Landau et al as discussed above, teach:

wherein said <u>clearinghouse server is operable to receive communications from said</u> second affiliate server in the form of a HTTP command comprising an affiliate field indicating a user's use of said secondary referral link;

In case of redirection from 1st server to 2nd server via the CROUTHAMEL 's CH, CROUTHAMEL in view of Landau et al as discussed above inherently teach

<u>wherein said primary referral link comprises a first sub-link from said first affiliate server to said clearinghouse server (e.g. indicating the path from 1st affiliate server to the CH) and a second sub-link from said clearinghouse server to said second affiliate server (e.g. indicating the path from the CH to 2nd affiliate server --since a LinkID in the referral link, to reach destination server, is disclosed in </u>CROUTHAMEL (col. 17 line 57 to col. 18 line 10))

In case of redirection from 2nd server to merchant server via the CROUTHAMEL 's CH, CROUTHAMEL in view of Landau et al as discussed above inherently teach:

<u>wherein said secondary referral link comprises a third sub-link from said second affiliate server to said clearinghouse server (e.g. indicating the path from 2nd affiliate server to the CH) and a fourth sub-link from said clearinghouse server to said merchant server(e.g. indicating the path from the CH to merchant server using a link ID as taught in CROUTHAMEL at col. 17 line 57 to col. 18 line 10).</u>

As stated above, since Crouthamel teaches all transactions go through the central hub, thus it would have been obvious to a PHOSITA to have the successive transactions go through the central hub for central tracking and accounting convenience for the affiliates as taught in the Official Notice #1. Since the Crouthamel system supports HTTP protocol (for use with web servers, see e.g. Figure 1 and associated text), thus it would have been obvious to a PHOSITA to have the referrer and destination fields as claimed ,in the referral links, in the system of Crouthamel in view of Landau and the Official Notice, to allow tracking successive referrals for commissions accounting.

The additional limitations of 52-55, are rejected with the additional prior art as discussed above. See rejection of 52-56 above in paragraph 8. The motivation to combine are the same as discussed above.

9.   2nd Alternate Rejection of Claims 51-56, 58 giving full weight to all the details of the HTTP:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support), Official Notice #2 and Official Notice #3 (with e.g. Kirsch US 5963915 or Pettersen US 6826594 as support).

Claims 51 and 58:

Claims 51-55, 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of in view of Landau et al., US 6804660 B2, herein Landau, Official Notice #1 (with e.g. Pettersen US 6826594 or Crouthamel US 7249056 as support),

Official Notice #2 as discussed above in paragraph 7 (including the section titled "Response to Arguments" below, which is made an integral part of the rejection).

Alternatively, if there is any doubt that Crouthamel teaches the claimed HTTP details, Official Notice #3 is taken that at the time of the invention that redirection links containing both a sublink indicating the target server destination (second or fourth sublinks) and another sublink indicating the source of the redirection request (1st and 3rd sublink) , for accounting purposes, are old.

See e.g. Kirsh (col. 6 line 35 to col. 7 line 19) disclosing a link at an affiliate site:
http://.direct server./redirect? <data>?http::// <redirect ..server>
where "The "direct.sub.-- server" portion of the redirection URL specifies the HTTP server target of a transaction…" and " The "data" term of the redirection URL provides data to the HTTPd server executed by the server system 16 to identify the source instance of the selected hyperlink".
 In Kirsh, e.g. "data" is considered part of the 1st and 3rd sublink, while http:://<redirect ..server can be considered the 2nd or 4th sublink.

(Kirsch US 5963915 A discloses Secure, convenient and efficient system and method of performing trans-internet purchase transactions, central clearinghouse, URL redirection and cookie technologies).

See also e.g. Pettersen US 6826594, col. 2 lines 7-41, disclosing links with embedded affiliate id's ; merchant URL's used for redirection to central hub.

Since the Crouthamel system supports HTTP protocol (for use with web servers, see e.g. Figure 1 and associated text), thus it would have been obvious to a PHOSITA to have added the referrer and destination fields and links as well known (e.g. taught by Kirsh) in the referral links,

in the system of Crouthamel in view of Landau and the Official Notice, to facilitate the needed
redirections and tracking of successive referrals for commissions accounting .

**The additional limitations of 52-55, are rejected with the additional prior art as
discussed above. See rejection of 52-56 above in paragraph 8. The motivation to combine
are the same as discussed above.**

Response to Arguments

10.   Applicant's arguments filed 02/28/2011 have been fully considered and are not
found to be persuasive. The following statements are also an integral part of the prior art
rejection above.

**First, Applicant asks for documentary evidence support for Official Notice #2 that it
is well-known before invention time to split commissions between several parties
participating in facilitating completion of a single service or transaction.** Applicant traversal
of the Official Notice is inadequate thus the Examiner does not need to supply documentary
evidence.

  " To adequately traverse such a finding, an applicant must specifically point out the
  supposed errors in the examiner's action, which would include stating **why** the noticed fact is
  not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b)."
  MPEP 2144.03(c).   If applicant **adequately traverses** the examiner's assertion of official
  notice, the examiner must provide documentary evidence in the next Office action if the
  rejection is to be maintained." MPEP 2144.03(c)

  As to **Official Notice #2,** an example had been given:
*"For example in real estate purchases the commissions (usually a percentage of the sale price)
are customarily split between the buyer's and seller's agents and/or brokers who facilitate the*

transaction." Applicant did not "specifically point out the supposed errors in the examiner's action, which would include stating **why** the noticed fact is not considered to be common knowledge or well-known in the art".

Applicant did not state that the above example is untrue.

Nevertheless, though not required, the Examiner now provides Hoyt US 20010034646 (Hoyt) (cited earlier and above) as support for Official Notice #2.

Hoyt, in the same affiliate art as Crouthamel and Landau, discloses system and method for creating a web page return link (see e.g. abstract) via a central server (RLS system) where successive referring parties(see e.g. [0066];([0068]) are paid when a single purchase is made by a user at a merchant website *(see e.g. ([0068]: ... "the crediting of sales may extend to both a first and a second referring member and according to terms defined in the RLS central server database"*, preceded by a disclosure of a single purchase and corresponding commission at [0068]:" *If a purchase is made (Step 470), a host site communicates that fact and relevant information to the RLS central repository where a determination is made as to whether or not a fee is owed to the referring web site as a commission for the referral. This information is determined by referring to the member's profile and the selections regarding the Instant Affiliates and referral fees (Step 480). **After the information is recorded regarding the payment of a commission to a referring web site, ... "***.

Second, Appellant argues the combination of prior art does not fairly suggest a **clearinghouse server** or software thereon, for splitting commissions based on a single purchase at a merchant website, as claimed:

"wherein said clearinghouse server is operable to assign compensation to each of said first affiliate website and said second affiliate website in response to (i) a network- connected user's use of said primary referral link provided by said first affiliate website to reach said second affiliate website; (ii)

said user's use of said secondary referral link provided by said second affiliate website to reach said merchant website; and (iii) said user' s completion of the electronic transaction with said merchant site."

However, first please **note** that method claim 61 does not claim compensation assigning by the clearinghouse server thus the prior art as presented does disclose claims 61-63, since the compensation assigning may be done manually to the parties behind the affiliate servers. Further, assigning does not mean actual payment either. Just recording the amounts due to each party would disclose claims 61-63. The combination of Crouthamel and Landau and Official Notices #1 and #2 would disclose claims 61-63. As discussed above, Official Notice #2 was taken that it is well-known before invention time to split commissions between several parties participating in facilitating completion of a single service or transaction.

As to the clearinghouse server assigning the compensation between 1st and 2nd servers based upon close of a purchase, it has been held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. *In re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). Thus automating the compensation splitting taught by Official Notice #2 as applied in the system of Crouthamel and Landau by a computer server would have been obvious.

Further Crouthamel's clearinghouse server keeps track of referrals and pay referral fees to affiliate referrers: (e.g. *Col. 7 lines 18-35 shows commission based referral system. ..**The CH captures transaction data at the merchant website and stores such (Fig 6 step 98 and associated text). Crouthamel teaches, for compensation of referrers, tracking of consumer actions (click-throughs and purchases) via the CH (col. 15 l. 4-32; Figure 4 and associated text); identifying the referrals resulting in purchases by cookies or by other identifiers or methods (col.19 lines 25-30; col.19 lines 12-42);storing transaction data and paying the referrer (col.19 lines 12-16);** Crouthamel further teaches tracking of affiliations between affiliates and merchants sites can be done with other types of identifiers (col. 12 lines 25-40).*

Among the several choices of servers to automate splitting of payments, there is the Crouthamel's clearinghouse server, the affiliates servers (1st and 2nd in our case), and the merchant server, a very limited number (4 at most) of alternatives. Since the number of options was just 4, and since in Crouthamel, the clearinghouse server keeps track of referral payments and <u>not</u> the other servers, hence, it would have been obvious to a skilled artisan, to try to configure the Crouthamel's clearinghouse server, one the 4 alternatives, with appropriate programming to allow solving the problem of assigning compensation to the 1st and 2nd referring servers from a single purchase at the merchant website. *(In KSR, the Supreme Court stated that an invention may be found obvious if it would have been obvious to a person having ordinary skill to try a course of conduct:*

When there is a design need or market pressure to solve a

problem and there are a finite number of identified, predictable

solutions, a person of ordinary skill has good reason to pursue

the known options within his or her technical grasp. If this leads

to the anticipated success, it is likely the product not of

innovation but of ordinary skill and common sense. In that

instance the fact that a combination was obvious to try might

show that it was obvious under § 103. 550 U.S. at 421, 127 S.

Ct. 1727). Another reason may be because the CH, in handling the finances, would be impartial to the different parties. The predictable result would just have been automatic splitting the compensation.Thus, the above splitting commissions limitation is fully disclosed by the prior art as applied.

Third, Appellant also argues there is no motivation or reason for a person skilled in the art to have combined these two systems of Crouthamel and Landau. However contrary to argument, the fact that Crouthamel also teaches database formats translation does not detract from its teachings of tracking referrals via a central hub and compensation therefor, while Landau also teaches commissions for tracked referrals. So they are in the same field of invention.

(Applicant's previous response dated February 4, 2010, pages 11-12 had this argument of hindsight reasoning, in essence arguing that the novelty of Crouthamel lies in its data translation feature

that has no relation to the present application. Contrary to argument Crouthamel and the present invention has in common the affiliates referral and compensation aspects and the online linking system to allow such referral and compensation. So using Crouthamel was entirely proper).

Appellant also argues: *" Moreover, the proposed combination of Landau to Crouthamel would render the system unsatisfactory for its intended purpose. (See MPEP § 2143.01(V)). For example, if successive websites were tracked without a clearinghouse as taught by Landau, then the data translation could not take place in the clearinghouse of Crouthamel and product data could not be properly accessed by a user"*. Contrary to argument, Landau is only used for the teaching of the business idea of successive referrals. This business idea can be implemented in the hub system of Crouthamel, without any technical difficulty, as in the system of Landau. Contrary to argument, that "the data translation could not take place in the clearinghouse of Crouthamel and product data could not be properly accessed by a user" is not a feature relied on for the combination proposed by the Examiner.

Fourth, Applicant also traverses the Official Notice #1, "at least for the reasons put forth in Applicant's previous response dated February 4, 2010, pages 11-12. As to Petersen as support therefor,as cited, Petersen stated:

> *A central linking web site system as described above is <u>advantageous</u> in that it greatly simplifies and centralizes accounting for both merchants and affiliates. Compensation amounts to affiliates and debit amounts from merchants can be aggregated, with a single payment made to each affiliate and a single debit taken from the merchant on a regular basis. This relieves affiliates and merchants of the time consuming task of performing such accounting functions themselves.*

Contrary to argument, the 2nd sentence does not take away the convenience, or "advantage" of the hub system, as taught by Pettersen, as support for the Official Notice #1.

Fifth, Applicant further argues a hub system is not claimed however that is the interpretation given to limitations such as "in response to a user computer connecting to a clearinghouse server..redirecting to second server ... in response to said user computer

connecting to said clearinghouse server…(from second server)… redirecting to ..merchant server".

Lastly, Applicant also argues the first and 2nd server must be given weight to, they actually so are in each of the alternate rejections above. Applicant does not argue that the http details must be given weight to.

Conclusion

12.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hoyt (support for Official Notice #2 above) shows successive referrals in a hub system and paying split commissions to referrers([0068]).

Crosskey US 6035281 discloses a System and method of multiparty billing or crediting when a user uses internet web access, including consecutive webpage access sessions.

13.   THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The

Examiner works a part-time schedule and can normally be reached on Monday-Wednesday 9:00-6:00. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, BOVEJA NAMRATA, can be reached at (571)272-8105. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/
Primary Examiner, Art Unit 3682